



**Kibeti v Republic (Criminal Appeal E040 of 2022)  
[2025] KECA 1065 (KLR) (13 June 2025) (Judgment)**

Neutral citation: [2025] KECA 1065 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPEAL E040 OF 2022  
MSA MAKHANDIA, HA OMONDI & LK KIMARU, JJA  
JUNE 13, 2025**

**BETWEEN**

**WILFRED ONDIEKI KIBETI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the judgment of the High Court of Kenya at Homa Bay (Waweru Kiarie, J) dated 27th November 2021 in CRA No. E008 of 2020)*

**JUDGMENT**

1. Wilfred Ondieki Kibeti, also known as Baba Chucky, the appellant herein, was charged, tried and convicted for the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*. He was upon conviction sentenced to life imprisonment. The charges emanated from the events that occurred on the 19th and 20th of October, 2019, in Rachuonyo South Sub- County, Homa Bay County. The appellant was alleged to have unlawfully and intentionally caused his male genital organ to penetrate the female genital organ of JA, (real name withheld) a ten- year-old child. He pleaded guilty to the charge, was convicted on his own plea of guilty and sentenced to life imprisonment as already stated. This caused some disquiet to the appellant. He therefore filed an appeal in the High Court of Kenya at Homabay. In the appeal, the appellant advanced three key grounds: his lack of understanding of the court's language during the plea taking, alleged coercion by the investigating officer for him to plead guilty and finally that he was unaware of the consequences of such an action. The State opposed the appeal stating that the plea was unequivocal and was taken as required and in accordance with the law.
2. The High Court upon reviewing the proceedings concluded that the appellant understood Kiswahili, the language used in trial court's proceedings, as evidenced by his responses during the taking of the plea and pleas for leniency after the conviction on his own plea of guilty. The court dismissed the claim of coercion or forceful persuasion at the time of the plea taking, for want of evidence and his failure to



raise them in the trial court. The first appellate court thereafter considered the legality of the sentence imposed. Given the mandatory life imprisonment sentence prescribed by Section 8(2) of the [Sexual Offences Act](#) for defilement involving children aged 11 years or younger, the court upheld the original sentence, finding no basis for interference. Consequently, the appeal was dismissed.

3. The appellant, dissatisfied with the High Court's decision has sought further recourse through this second and perhaps last appeal in this Court. His undated grounds of appeal, raise three key issues; the first appellate court erred in upholding the mandatory life sentence, arguing that it violated constitutional principles and restricts judicial discretion; that the plea was not unequivocal, citing unclear language used in the proceedings, insufficient caution, failure to record his answers accurately and that the trial court failed to consider his mitigation as a first offender, which unfairly prejudiced him during sentencing.
4. The appeal was heard on 29<sup>th</sup> April 2025 on our virtual platform when the appellant appeared in person from Naivasha Maximum Prison while Mr. Okango, learned Assistant Director of Public Prosecutions appeared for the respondent. They all opted to rely wholly on their written submissions without the need to highlight.
5. The appellant submitted on three primary grounds of appeal as follows: On the first ground, the appellant submitted that the mandatory life sentence prescribed under Section 8(2) of the [Sexual Offences Act](#) violates constitutional principles. He contended that such mandatory sentencing denies judicial officers the discretion to assess individual circumstances of each case, thereby infringing on Article 27(1)(2)(4) of [the Constitution](#), which guarantees equality and fairness before the law. He relied on the case of Francis Karioko Muruatetu & Another v Republic [2007] eKLR, where the Supreme Court of Kenya held that the mandatory nature of sentences and in particular in murder cases undermined the right to a fair trial by denying convicts the opportunity to present mitigating factors. Furthermore, the appellant cited the case of Philip Mueke Maingi & Others v Director of Public Prosecutions & Attorney General [2022] KEHC 13118 (KLR), for the proposition that minimum mandatory sentences often fail to account for case-specific circumstances, thereby disregarding constitutional principles and standards.
6. On the second ground, the appellant asserted that his plea was not unequivocal. He argued that the plea-taking procedure failed to adhere to established principles, including those outlined in the case of Adan v Republic [1973] EA 445 and Kariuki v Republic [1984] eKLR. These cases emphasize the necessity of explaining charges and their essential elements to the accused in a language he understands and of accurately recording the accused's words. The appellant maintained that the language used during his plea taking was unclear, the caution administered was insufficient, and his words were not properly recorded, thereby rendering the plea not unequivocal.
7. On the third ground, the appellant criticized the omission of mitigation during sentencing, highlighting that as a first offender, he was entitled to have his mitigating factors properly considered. He referred to the case of Arissol v Regina [1957] EA 447, 449, which underscored the importance of imposing the least severe sentence on first offenders where permissible. Additionally, he relied on Sections 216 and 329 of the [Criminal Procedure Code](#), which mandate the consideration of mitigating factors in sentencing. He argued that the trial court's failure to consider his mitigation resulted in prejudice and an incomplete trial process. In the ultimate he prayed for the appeal to be allowed.
8. In response Mr. Okango, argued that the mandatory life sentence prescribed under Section 8(2) of the [Sexual Offences Act](#) is lawful and appropriate for cases involving defilement of children aged 11 years or younger. He emphasized that the provision reflects the seriousness of the offence and seeks to protect vulnerable children from such heinous crimes. The respondent further contended that the



- appellant's reliance on *Muruatetu & Another v Republic* [supra] was misplaced, as the precedent applied specifically to murder cases and does not extend to offences under the *Sexual Offences Act*.
9. On plea taking, Mr. Okango submitted that the appellant voluntarily pleaded guilty and demonstrated understanding of the charges, as evidenced by his responses during the plea-taking process. He relied on the principles established in *Adan v Republic* (supra), which require that the accused admits to the charge unequivocally. Counsel argued that the trial court followed the correct procedure and that the appellant's claims of language barriers and procedural flaws were unfounded.
  10. Regarding mitigation, counsel submitted that the appellant's status as a first offender was duly noted but that could not override the mandatory sentence prescribed by law. He referred to the case of *Dismas Wafula Kilwake v Republic* [2019] eKLR, which underscores the obligation of courts to enforce mandatory sentences where stipulated. He therefore maintained that the trial court's sentencing decision was consistent with legal provisions and aimed at deterrence and protection of the public.
  11. In conclusion, Mr. Okango urged the Court to dismiss the appeal in its entirety.
  12. This is a second appeal arising from the judgment of the High Court, as a first appellate court. In a second appeal, the jurisdiction of this Court is confined to matters of law only as provided for in Section 361(1)(a) of the *Criminal Procedure Code*. The Court does not ordinarily interfere with concurrent findings of fact by the trial and first appellate courts unless it is demonstrated that such findings were unsupported by evidence, were based on a misapprehension of the evidence, or were made on wrong principles of law. See the case of *Njoroge v Republic* [1982] KLR 388.
  13. Having carefully reviewed the record, the submissions presented by both parties, and the applicable legal provisions, two main issues emerge for determination: First, whether the appellant's plea of guilty was not unequivocal, and second, whether the sentence imposed was inept of mitigation and therefore harsh, excessive and unconstitutional in the circumstances of the case.
  14. In this appeal, the two courts below arrived at concurrent findings of fact that the appellant committed the offence of defilement as charged as he unequivocally pleaded guilty to the same. In *Adan Muraguri Mungara v Republic*, Cr. No. 347 of 2007 (Nyeri), this Court set out the circumstances under which it will disturb concurrent findings of fact by the trial court and the first appellate court, in the following terms:

“As this court has stated many times before, it has a duty to pay homage to concurrent findings of fact made by the two courts below unless such findings are based on no evidence at all or on a perversion of the evidence, or unless on the totality of the evidence, no reasonable tribunal properly directing itself would arrive at such findings. That would mean that the decision is bad in law, thus entitling this Court to interfere.”
  15. We do not discern such misgivings in the circumstances of this case. The appellant contended that his plea was not unequivocal, citing language barriers, lack of adequate and sufficient caution, and procedural flaws. It is settled law that for a trial court to convict an accused on his plea of guilty it must be satisfied that the plea was unequivocal.
  16. The court must also ensure that the accused fully understands the nature of the charges and the consequences of entering a guilty plea. In *Adan v Republic* [supra], this Court laid down in detail the procedure which must be strictly followed whenever the trial court is confronted with a plea of guilty. Any procedural departure from, noncompliance or missteps will render the plea equivocal. In particular it is required that the charge and its elements be clearly explained to the accused in a language he or she understands; his responses are then recorded verbatim; in the process, the trial court should



caution the accused the consequences of pleading guilty and the possible sanction that may be imposed. If at the end of the entire process the accused still maintains his plea of guilty, then the trial court will be perfectly entitled to convict the accused and sentence him accordingly. However, should he not agree with or disputes the facts as laid out by the prosecution at any stage, then a plea of not guilty will be returned.

17. Having reviewed the record, it is clear to us beyond peradventure that, there was no departure from the procedure laid out in the case of *Adan vs Republic* (supra). If any thing, the trial court was extremely meticulous and scrupulous in the observance on the dictates of the caselaw on the issue and cannot therefore be faulted. The High Court, as the first appellate court reviewed the process of plea taking by the trial court and was equally satisfied that it was properly taken. In other words, it found no merit in the appellant's claims of coercion, language barrier or misunderstanding of the proceedings. As observed in the case of *Kariuki v Republic* [1984] eKLR, appellate courts must presume that trial courts observed proper procedure unless there is compelling evidence to the contrary.

Having carefully considered the record, we are satisfied that the plea of guilty was properly taken and was therefore unequivocal.

18. The appellant further alleges that the mandatory life sentence prescribed under Section 8(2) of the *Sexual Offences Act* is unconstitutional, arguing that it violates principles of judicial discretion and fails to consider individual circumstances of each case. However, this Court reiterates the binding precedent set by the Supreme Court in *Muruatetu & Another v Republic* and *Katiba Institute & 4 others (Amicus Curiae)* [2021] KESC 31 (KLR), where the Court clarified that the principles established in the original *Muruatetu* decision apply exclusively to sentences of murder under Sections 203 and 204 of the *Penal Code*. The Court emphasized that the guidelines therein for re-sentencing hearings, including the consideration of mitigating and aggravating factors, are limited to murder cases and do not extend to other mandatory sentences prescribed by law particularly in the *Sexual Offences Act*.
19. Indeed, Section 8(2) of the *Sexual Offences Act* imposes a mandatory life sentence for defilement involving a child aged eleven years and under. The sentence reflects the gravity of the offence and the society's need to protect vulnerable members of society. In *Dismas Wafula Kilwake* (supra), this Court differently constituted affirmed that courts are bound to apply mandatory sentences where prescribed by statute, unless declared unconstitutional. We therefore, find no basis to interfere with the sentence imposed.
20. Regarding failure by the trial court to consider his pleas in mitigation, the trial court duly noted the appellant's plea for leniency but was constrained by the mandatory nature of the sentence under the statute. The trial and first appellate courts properly applied the law, and no miscarriage of justice has been demonstrated as a result.
21. In light of the foregoing analysis, we find no merit in the appeal.

Accordingly, it is dismissed in its entirety.

**DATED AND DELIVERED AT KISUMU THIS 13<sup>TH</sup> DAY OF JUNE, 2025.**

**ASIKE-MAKHANDIA**

**JUDGE OF APPEAL**

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**H. A. OMONDI**

**JUDGE OF APPEAL**



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**L. KIMARU**

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

**DEPUTY REGISTRAR.**

